

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 03-20008-BC  
Honorable David M. Lawson

JAMES ROY SYLVESTER, JR.,

Defendant.

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**ORDER GRANTING IN PART AND DENYING IN PART  
GOVERNMENT'S MOTION TO REQUIRE EXPEDITED TRANSPORTATION  
OF CUSTODIAL WITNESSES OR IN THE ALTERNATIVE TO ADJOURN TRIAL**

Before the Court is the government's motion to require the United States Marshal's Service to expedite transportation of certain witnesses to testify for the government at the defendant's upcoming trial or in the alternative to adjourn the trial. James Sylvester is presently charged with various drug and weapons offenses in an eighth superseding indictment. Trial is scheduled to begin on September 13, 2005. The government has stated an intention to call as witnesses two former co-defendants, Johnnie Whittington and Calvin Ayers, both of whom presumably are now in the custody of the United States Bureau of Prisons.

The government has represented in its motion that the Marshal's Service stated that it would not transport Whittington to Bay City, Michigan until September 21, 2005, and Ayers would not be transported for a month. No reason was given for this delay. However, it is clear that if the Marshal's proposed schedule is followed, the witnesses would not be available during the government's case-in-chief at the trial, the entirety of which will conclude within two weeks of its commencement. It does not appear that the government has sought or obtained a writ of *habeas*

*corpus ad testificandum* for either of the witnesses, nor has the government stated the date it intends to call the witnesses.

The original indictment in this case was returned on February 26, 2003. The eighth superseding indictment was filed on January 12, 2005. The defendant filed a motion to dismiss because of pretrial delay, which the Court denied on June 16, 2005. The Court then scheduled the trial for late June 2005, only to adjourn it because of defense motions *in limine* that were filed thereafter. At a final pretrial conference held on June 23, 2005, the Court stated that it would not permit any further delays following the adjudication of the latest defense motions. Those motions were decided on August 29, 2005.

The government has represented that the defendant does not oppose the relief requested in this motion. However, further delay of the trial cannot be tolerated. The parties have had ample notice of the trial date and the need to produce the necessary witnesses is manifest. The government has not explained its inability to secure the cooperation of the Marshal's Service in transporting witnesses in the custody of the Bureau of Prisons, but the Court believes it is appropriate to direct the Marshal to use its best efforts to make those individuals available so that the trial may proceed as scheduled.

Accordingly, it is **ORDERED** that the government's motion to require expedited transportation of custodial witnesses or in the alternative to adjourn trial [dkt #163] is **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that the United States Marshal's Service shall use its best efforts to transport Johnnie Whittington and Calvin Ayers to the court at Bay City, Michigan so that they

will be available to testify on September 15, 2005. The cost of transporting and lodging these witnesses shall be borne by the United States Attorney's office. The trial will not be adjourned.

s/David M. Lawson  
DAVID M. LAWSON  
United States District Judge

Dated: September 7, 2005

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein and the United States Marshal's Service by electronic means or first class U.S. mail on September 7, 2005.

s/Tracy A. Jacobs